

The rental of sport utility vehicles may be subject to tax under the Automobile Renting Occupation and Use Tax Act depending upon how they are registered by the Secretary of State's Office. See 35 ILCS 155/2. (This is a GIL).

April 22, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated March 12, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

On behalf of the 1,200 members of the COMPANY who are licensed, franchised new car dealers in Illinois, we hereby respectfully request clarification of a tax treatment matter that affects dealers in general. Recently some of our members have had questions regarding the application of the Automobile Renting and Occupation Tax Act (ART) to the renting of pick-up trucks and multipurpose passenger vehicles (commonly referred to as sports utility vehicles (SUV)).

The ART defines 'Automobile' as:

'any motor vehicle of the first division, a motor vehicle of the second division which is a self-contained motor vehicle designed or permanently converted to provide living quarters for recreational, camping or travel use, with direct walk through access to the living quarters from the driver's seat, or a motor vehicle of the second division which is of the van configuration designed for the transportation of not less than 7 nor more than 16 passengers, as defined in Section 1-146 of 'The Illinois Vehicle Code.' (Ill. Rev. Stat. 1991, ch. 95 ½, par. 1-146) (Section 2 of the Act) This includes motorcycles and motor driven cycles."

The Illinois Vehicle Code has the following definitions:

motor vehicle: every vehicle which is self propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except for vehicles moved solely by human power and

motorized wheelchairs. For this Act, motor vehicles are divided into two divisions:

First Division: Those motor vehicles which are designed for the carrying of not more than 10 persons.

Second Division: Those motor vehicles which are designed for carrying more than 10 persons, those motor vehicles designed or used for living quarters, those motor vehicles which are designed for pulling or carrying freight, cargo or implements of husbandry, and those motor vehicles of the First division remodelled for use and used as motor vehicles of the second division.

multipurpose passenger vehicle: a passenger carrying vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation.' (625 ILCS 5/1-148.1)

passenger car: a motor vehicle of the first division including a multipurpose passenger vehicle, that is designed for carrying not more than 10 persons. (625 ILCS 5/1-157)

truck: every motor vehicle designed, used or maintained primarily for the transportation of property. 625 ILCS 5/1-211.

Our understanding is that the application of the ART depends upon how the vehicle is plated. That is, if the SUV has passenger plates, then the ART applies. If the SUV has 'B' or truck plates, then the ART does not apply. Is this interpretation accurate? In addition, does the ART apply when the SUV is plated with special plates like the violence prevention plates?

Finally, manufacturers are now creating full size SUVs meant for carrying passengers but have pick-up beds attached. See the attached article from Automotive News on these vehicles. How does the ART apply when these vehicles are rented? If the above mentioned understanding is correct, it would depend upon how they are plated since they are full size SUVs.

Our organization sincerely appreciates your prompt attention and assistance in this matter. I look forward to receipt of your response. If you have any questions, please do not hesitate to call.

As you noted in your letter, quoted above, Section 2 of the Automobile Renting Occupation and Use Tax Act (35 ILCS 155/2 (1996 State Bar Edition)) defines the term "automobile". Please note that this definition does not include motorcycles and motor driven cycles. The definition of automobile under the Automobile Renting Occupation and Use Tax Act (ART) includes all First Division motor vehicles, but only certain Second Division motor vehicles, such as

RVs, campers, and certain size vans. The remainder of the types of Second Division motor vehicles, such as trucks and other motor vehicles designed or used for pulling or carrying freight, cargo, or implements of husbandry as described in Section 1-146 of the Illinois Vehicle Code, do not qualify.

As noted above, how a specific motor vehicle is registered with the Secretary of State's Office will affect whether that motor vehicle will qualify as an automobile under ART. The type of license plate assigned to a vehicle may be an indication of its status as a First or Second Division vehicle, such as a "B" truck license plate, but the type of license plate, including special license plates, will not be determinative of whether that vehicle qualifies as an automobile under ART.

If a sport utility vehicle (SUV) is registered by the Secretary of State's Office as a First Division vehicle, it will qualify as an "automobile" under the Automobile Renting Occupation and Use Tax Act (ART). If a sport utility vehicle (SUV) is registered by the Secretary of State's Office as a Second Division vehicle and it does not conform to the specific description of a qualifying Second Division vehicle, as described in Section 2 of ART, it will not qualify as an "automobile" under ART. This analysis would be the same whether the vehicle is a standard SUV or is of the configuration described in your letter that have pick-up beds attached.

It is our understanding that the Secretary of State's Office will only register an SUV as a Second Division vehicle if the vehicle is intended to be used for pulling or carrying freight, cargo, or implements of husbandry. We believe that many SUVs are not intended for this purpose, but are instead intended to be used primarily for the transportation of passengers. We recommend that you contact the Secretary of State's Office to confirm how it is currently registering SUVs including the new type of SUVs with pick-up beds.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact us at (217) 782-7296.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.